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HAZEL L. PARKER
CLERK OF DISTRICT COURT
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8 **MONTANA SIXTEENTH JUDICIAL DISTRICT COURT**
9 **CUSTER COUNTY**

10 LINDA ("LIN") LEE NICHOLSON,) Cause No. DV-2019-86
11)
12 Plaintiff,) District Judge: Michael B. Hayworth
13)
14 vs.)
15)
16 WAL-MART, INC.; and JOHN DOES 1-4,) **AMENDED COMPLAINT AND**
17) **DEMAND FOR JURY TRIAL**
18 Defendants.)
19)
20)
21)
22)
23)
24)
25)

26 Plaintiff Linda ("Lin") Lee Nicholson, by and through her attorneys of record,
27 Odegard Miller Law, PLLC, hereby states, alleges and avers as follows:

28 **JURISDICTION AND VENUE**

29 1. At all times relevant herein, Lin Nicholson ("Lin" or "Plaintiff") was a
30 resident of Wibaux, Wibaux County, Montana.

31 2. At all times relevant herein, Defendant Wal-Mart, Inc. ("Wal-Mart") is a
32 for-profit corporation registered with the Montana Secretary of State and authorized
33 to do business in Miles City, Montana.

34
35 **EXHIBIT B**

1 3. The true names and capacities of Defendants named herein as John
2 Does 1-4, inclusive, are unknown to Plaintiff, who therefore brings these claims
3 against these Defendants by fictitious names. Plaintiff may seek to amend this
4 Complaint to state the true names and capacities of John Does 1-4 when the same have
5 been determined, together for further appropriate charging allegations.
6

7 4. Plaintiff is informed and believes and therefore alleges that each of the
8 fictitiously named Defendants may be responsible in some manner for the occurrences
9 and harms alleged herein and that his damages as alleged herein may have been
10 proximately caused by the Defendants' acts or omissions, whether independently or
11 while acting in concert with the Defendants.
12

13 5. Defendants John Does 1-4, inclusive, are natural persons, supervisors,
14 agents, contractors, or other legal entities who may have caused or contributed
15 Plaintiff's injuries as alleged herein, while acting in the course and scope of their
16 employment and/or agency with the Defendants, or acting independently. As such,
17 each lawful act or omission and each violation is imputable to Yellowstone County.
18

19 6. The accident at issue occurred in Miles City, Custer County, Montana.
20

21 8. Jurisdiction over these Defendants is proper because Defendants do
22 business in the State of Montana and each Defendant engaged in conduct that resulted
23 in the accrual of a tort action in Montana.
24

25 9. Venue in this court is proper because one or more Defendants engaged
in tortious conduct that resulted in the accrual of a tort action in Custer County,
Montana.

GENERAL ALLEGATIONS

10. On February 27, 2019, Lin went shopping at the Wal-Mart Supercenter in Miles City, Montana.

11. The winter was marked by heavy snowfall, and patrons would track snow into the store on the linoleum floors, thus making some parts of the store slippery and unsafe.

12. Lin finished shopping, completed her transaction, and was preparing to leave the Wal-Mart store area. Prior to leaving, Lin went into the store's public restroom. As she was exiting the restroom, which is located at the front of the store, she slipped on an unseen, indistinguishable, and inconspicuous puddle that had accumulated from melted snow along the shoppers' walking path in front of the restroom, near the service desk area and the optics department.

13. Lin landed hard on her left side and broke her left hip.

14. Unknown Wal-Mart employees witnessed Lin fall and offered her assistance.

15. Upon information and belief, there was no signage advising Wal-Mart patrons, including Lin, that the floor at the front of the store was slippery and unsafe, nor did Wal-Mart personnel undertake any effort to remedy the slippery and unsafe condition.

16. Lin was subsequently taken to Holy Rosary Hospital in Miles City, where she remained hospitalized for several days and received extensive and expensive medical treatment for her left hip injuries.

1 17. As a result of Lin's fall at the Wal-Mart Supercenter in Miles City, she
2 has suffered, and will continue to suffer, severe pain and disability, mental anguish,
3 loss of enjoyment of life, medical expenses, and lost wages.

4 **COUNT I – NEGLIGENCE/PREMISES LIABILITY**

5 18. Lin restates and re-allege all previous allegations as fully set forth
6 herein.

7
8 19. Defendants had a duty of care to monitor, maintain, and keep its
9 premises in a reasonably safe condition for all persons entering the store and to warn
10 of any hidden or lurking dangers.

11 20. Defendants breached their duty of care to monitor, maintain, and keep
12 its premises in a reasonably safe condition and to warn of any hidden or lurking
13 dangers when they failed to monitor and maintain the floors within the Wal-Mart
14 Supercenter safe condition; allowed ice to melt and water to accumulate in an unsafe
15 manner that was not open or obvious to Lin; and failed to provide adequate signage to
16 warn patrons of the unsafe condition.

17
18 21. As a direct and proximate result of Defendants' breach of these duties,
19 Lin has suffered and will continue to suffer severe pain and disability, mental anguish,
20 loss of enjoyment of life, lost wages, and has incurred and will continue to incur
21 medical and non-medical expenses.

22 22. Defendants' breach of the duties outlined in Paragraphs 19 through 21
23 constitute negligence.

24
25 23. By virtue of Defendants' acts of negligence, they are legally responsible

1 to Lin for all resulting damages.

2 **JURY TRIAL DEMAND**

3 Lin demands a trial by jury on all issues so triable.

4 **PRAYER FOR RELIEF**

5 Lin prays for judgment in her favor granting the following relief:

- 6
- 7 1. For reasonable compensation for past and future medical and related
- 8 expenses;
- 9 2. For reasonable compensation for Lin's lost earnings and loss of future
- 10 earning capacity;
- 11 3. For reasonable compensation for Lin's physical and mental pain and
- 12 suffering;
- 13 4. For Lin's costs of suit and attorneys' fees incurred herein; and,
- 14 5. For other and future relief as the Court deems just and proper.
- 15

16 DATED this 3rd day of December, 2019.

17 ODEGAARD MILLER LAW, PLLC
18 *Attorney for Plaintiffs*

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20 By _____

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